IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 156 of 2004
IN
COMPANY APPLICATION No 169 of 2004
WITH
COMPANY PETITION No 11 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATYADEV CHEMICALS PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 156 of 2004
MR VK BHATT FOR NANAVATI & NANAVATI for Petitioner No. 1
MR JITENDRA MALKAN for Respondent No. 1

2. COMPANY PETITION No. 11 of 2001
BOARD OPINION for Petitioner No. 1
MR VK BHATT FOR NANAVATI & NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 13/05/2005

COMMON ORAL JUDGEMENT

Company Petition No. 11 of 2001 was registered on the basis of the opinion forwarded by the Board for Industrial and Financial Reconstruction (BIFR for short) to this Court under Section 20 (1) of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA for short) on 17.01.2001 alongwith the order passed by BIFR on 14.12.2000 and other orders. The BIFR in its order dated 14.12.2000 has held that the Company, namely, M/s. Satyadev Chemicals Pvt. Ltd. had been with the BIFR since 1989 and after failure of the package under Section 17 (2) of SICA, no viable and fully tied up proposal was forthcoming from the Company. The Company was not supplying the desired information and the latest financial status of the Company to the MA, and therefore, any effort for change of management would also not be fruitful. After all these considerations and having no objection from the side of the Secured Creditors and the Government of Gujarat, the BIFR came to the conclusion that it would not be possible for the promoters to revive the Company within a reasonable period of time while meeting with all its financial obligations and, therefore, confirmed their primafacie opinion for winding up of the Company.

2. After the above petition was registered, one more Company Petition No.117 of 2001 was filed by the workers of the respondent Company and prohibitory order was passed whereby the Company was restrained from disposing of its assets. On 25.04.2003, Mr. V.K. Bhatt, learned advocate appearing for the Company has made a statement to the effect that pursuant to the order dated 07.11.2001 passed by this Court, the respondent Company has paid dues of some of the workmen. However, some of the workmen could not be paid on account of non-availability of their addresses and whereabouts. The Court has also recorded the statement of Mr. Bhatt that as and when the workmen approaches the Company giving 96 hours' notice, the dues of the concerned workmen would be paid. The Court has further observed that the learned advocate appearing for the Petitioning Creditors (workmen in Company Petition No.117 of 2001) has not appeared for last quite sometime. In view of the aforesaid statement made and the assurances given, Company Petition No.117 of 2001 was disposed of on 25.04.2003.

3. The Court has passed further order on 10.11.2003

in Company Petition No.11 of 2001 recording the statement of Mr. Bhatt and also considering the affidavit filed on behalf of the Company to the effect that according to Mr. Bhatt, the only Secured Creditor i.e. Bank of India has been paid fully and none of the Unsecured Creditors has approached this Court for their dues. The workers were undisputedly paid and, therefore, there was no scope to pass an order of winding up though the Board has so opined.

4. During the pendency of the aforesaid petitions before this Court, the Company has moved Company Application No. 169 of 2004 seeking directions from this Court to convene separate meetings of the Shareholders and Creditors of the Company and, if thought fit, approving with or without modification, a Scheme of Compromise and/or Arrangement proposed to be made between the Company and the Shareholders and the Creditors of the Company. Pursuant to the order passed by this Court on 20.05.2004, the Company was directed to convene a meeting of the members as well as Creditors of the Company and Mr. S.N. Sharma, Deputy Registrar of this Court was appointed as the Chairman of the said meetings and was directed to submit his report to the Court. The notice of the meeting was sent individually to the members as required by this Court in the aforesaid order together with a copy of the terms of arrangement and the statement required to be furnished under Section 393 of the Companies Act and form of Proxy. The notice of the meeting was also advertised in 'Indian Express' - English Daily and 'Loksatta-Jansatta' - Gujarati Daily - both Vadodara Editions dated 26.05.2004 and necessary affidavit regarding issuance of notice and publication of advertisement was also filed.

5. On 19.06.2004, the meetings as directed above were duly convened and separate reports were filed by the Chairman of the meetings appointed by this Court. It was stated by the Chairman in his report that the meeting of the members of the Company were attended to by six members, either in person or by Proxy having the value of the total share capital held by them of Rs.11.27 Lacs and they have approved unanimously the Scheme of Compromise and/or arrangement circulated along with the notice dated 25.05.2004. Similarly, meeting of the Creditors of the Company was attended to by 38 Creditors, either in person or by Proxy and the total value of their debts was to the tune of Rs.4,90,73,397.85 and they have also approved unanimously the Scheme of Compromise and/or arrangement.

6. The Company thereafter filed substantive petition being Company Petition No. 156 of 2004 and the said petition was admitted and order regarding advertisement was also passed on 30.07.2004. The petition was ordered to be advertised in 'Indian Express' - English Daily and 'Loksatta-Jansatta' - Gujarati Daily - both Vadodara Editions fixing the date of final hearing on 30.09.2004 and publication of advertisement in the Official Gazette was dispensed with. The Court has also issued notice to the Central Government. An affidavit of service to the Regional Director as well as affidavit of publication of advertisement was also filed. Since more than 8 months have passed after admission of the petition, the Court was constrained to pass an order on 30.03.2005 observing that more than 8 months have passed and still the Regional Director has not submitted his report. Even the appearance on his behalf was not filed. As per the Scheme, the Company has proposed to pay the dues of all the Secured Creditors in phase wise and during the year 2004 - 05, 10% was to be paid. However, the year 2004-05 was already over and hence, the question remained with regard to the year 2005-06 to 2008-09. The Court has further observed that if the Regional Director has any objection and if there was any query, it should be placed before this Court and the learned Asst. Solicitor General who normally appears on behalf of the Regional Director was directed to place those objections along with his appearance on record. The Court has also made it clear that if no appearance is filed or objections, if any, are not placed on record, the Court will decide the matter on its own merits.

7. The Court has heard the matter at length on 28.04.2005. The Court has also recorded the submissions made by Mr. V.K. Bhatt to the effect that all the labour dues have been satisfied by the Company. There was only one Secured Creditor and settlement was arrived at between the Company and Bank of India, being the sole Secured Creditor. No Due Certificate was also produced. The Unsecured Creditors have approved the Scheme of revival and detailed proposal has been made in the Scheme towards the satisfaction of their dues. The dues of the Sales Tax Department has also been paid off. The Court has also considered the objection raised on behalf of the Central Government in the form of the communication sent by the Regional Director on 12.01.2005. The only objection raised therein was that the Company has agreed to bring an additional equity capital of Rs. 15 Lacs

whereas the expected present value of land would be Rs.4.40 Crores and hence, there would be shortfall of fund to the tune of more than Rs. 1 Crore as the liabilities towards Unsecured Creditors are to the tune of about Rs. 5.90 Crores. Keeping this fact in mind, the Court took the view that atleast the Company should raise the promoter's contribution and the promoter should bring some more amount so as to inspire the confidence of the Court. The Court, therefore, directed the Company to file the list of the Unsecured Creditors and the agreement arrived at by the Company with the manufacturers. The Company was further directed to deposit a sum of Rs. 35 Lacs before this Court on or before 10.05.2005 so as to make the 10% payment to the Unsecured Creditors under the Scheme in the year 2004 05. The Court has, therefore, decided to finally consider the Scheme proposed by the Company and to pass appropriate order.

8. On 12.05.2005, when the matter has come up for hearing, Mr. V.K. Bhatt, learned advocate appearing for the Company has placed on record detailed affidavit of the Director of the Company wherein it is stated that though this Court has directed the Company to deposit a sum of Rs.35 Lacs on or before 10.05.2005, being 10% of the amount to be paid to the Unsecured Creditors under the Scheme in the year 2004-05, looking to the exact working, the said amount comes to Rs.28,89,316/-. The office was, therefore, directed to accept the demand draft of the said amount. The Court has, however, permitted the Company to deposit the balance amount within one week from the date of the order and matter was adjourned to 13.05.2005.

9. In the above background of the entire case history, the matter is finally heard today. Mr. V.K. Bhatt, learned advocate appearing for the Company has submitted that the Company was established in the year 1952 to manufacture photographic chemicals, industrial and fine chemicals at its factory located at Pratapnagar, Vadodara. The Company had excellent client base and export market for some of its products as well as export potential for some of the products, which have been developed in the Company's own Research and Development Department. Due to the objection from the Vadodara Municipal Corporation on the ground of air pollution, the Company closed its manufacturing activities at Pratapnagar, Vadodara and moved its manufacturing activities at Bhaili site where manufacturing activities

were already going on since 1971-72. The year of 1987 was a year of difficulties. The Company had incurred huge cash outflow for the retrenchment amount to be paid to the employees of the closed unit at Pratapnagar. This affected the working of the Company. However, the Bhaili Unit's activities were going on and the Company was making profit.

10. Mr. Bhatt has further submitted that in the monsoon of 1997, there were heavy rains which caused polluted water to flow outside the premises, which resulted in a closure notice by the Pollution Department. Subsequent to the clearance from the Pollution Department, the Company faced strike by the workmen and this was a last blow on the Company. The net result was that the Company became a Sick Industrial Company and was declared as such by BIFR. For various reasons, especially labour problems and financial constraints, various alternatives, rehabilitation package, though considered could not be implemented. As a result, BIFR gave its opinion that the Company's net worth could not be made positive and the same was required to be wound up. Accordingly, the opinion has been sent to this Court which is numbered as Company Petition No. 11 of 2001.

11. Mr. Bhatt has further submitted that subsequent to the receipt of the opinion of BIFR by this Court, the Company had been able to settle two major points which had impressed upon the BIFR to form its opinion (a) Dues of Secured Creditor i.e. Bank of India; (b) Dues of workers. As regards settlement of dues of Bank of India was concerned, necessary settlement has been arrived at wherein the Company proposed to settle the outstanding amount of Rs. 70 Lacs towards the total dues being full and final settlement. The said proposal was agreed in principle and thereafter the Company paid an amount of Rs.73.80 Lacs towards the full and final settlement of the claim of the Bank. Taking into consideration, the previous payment made by the Company to the Bank, the entire claim of the Bank was settled at Rs.87.80 Lacs and upon receipt of this payment, the said Bank withdrew the proceedings filed by it before D.R.T., Ahmedabad being O.A. No. 612 of 2000 on 06.10.2003. Hence, at present, the Company does not have any Secured Creditor.

12. Mr. Bhatt has further submitted that as regards the problems of employees are concerned, the Company made payments to all the workers except a few one and upon the

statement having been made by the Company before this Court, the Company Petition No.117 of 2001 was disposed of. In terms of the said settlement, all the workers have been paid and at present no outstanding amount is there in respect of the dues of the workers.

13. As per the audited balance sheet of the Company as on 31.03.2004, the Company had the following liabilities :-

(a) Unsecured Loans by way of inter corporate deposits and loans from Shareholders. Rs.3,48,18,819/-

(b) Creditors of the Company for supply of goods. Rs.1,02,31,709/-

(c) Other liabilities estimated at Rs.1,42,73,113/-

As a result of the implementation of the Scheme, the Company would be in a position to revive its trading activities and it would be able to discharge all its debts as on the date of the petition within a period of five years from the date of sanction of the Scheme by this Court and thereafter from the trading activities, the Company would be in a position to declare reasonable dividend on its capital. The compromise or arrangement was in the following terms :-

(a) The shareholders of the Company shall approve the sale of the Company's land at village Bhaili, as may be finalised by the Board of Directors, the proceeds whereof would be utilised for early payment to the Creditors.

(b) The Creditors to an extent of Rs. 5.93 Crores as stated earlier would be paid their dues in the following manner.

Year	Rs. in Lacs.
2004 - 2005	10%
2005 - 2006	15%
2006 - 2007	20%
2007 - 2008	25%
2008 - 2009	30%

14. Mr. Bhatt has further submitted that the above proposals were duly approved by the Shareholders and the Creditors at their meetings and it now requires the sanction of this Court. Sanctioning of the compromise or arrangement would benefit the Creditors as their dues which are not likely to be realised in full in ordinary course, if the Company is wound up, would be paid in full and in a phased manner. After the payment due to the Creditors is made, the profit generated by the Company would be utilised for distribution of dividend to the members. The Company which is opined to be wound up would be in a position to revive and discharge its debts and make its net worth positive. Considering all these aspects of the matter, Mr. Bhatt has strongly urged before the Court that the Scheme of compromise and/or arrangement as presented by the Company should be sanctioned by this Court.

15. The Court has also heard Mr. Jitendra Malkan, learned Assistant Solicitor General appearing for the Central Government and has also considered the communication sent by the Regional Director to the Registrar of Companies on 12.01.2005 which is placed on record. The only objection raised by the Regional Director that as per the Balance-sheet as on 31.03.2004 of the Company, their liabilities were to the tune of Rs.5,93,23,641/- and as per Clause (18) of the Scheme, the Promoters shall bring in the additional equity capital of Rs. 15 Lacs whereas the expected present value of land would be Rs. 4.40 Crores and hence, there would be shortfall of fund to the tune of more than Rs. 1 Crores. The promoters of the Company may be directed to bring in this amount.

16. As stated earlier, this objection was duly taken care of by directing the Company to deposit Rs. 35 Lacs which is 10% of the amount due and payable to the Unsecured Creditors during the year 2004 - 2005. The Company has already deposited Rs.28,89,316/- pursuant to an order dated 12.05.2005 and for balance payment, the time was granted upto one week from the date of the said order. The remaining amount was to be paid in a phased manner as indicated earlier and the Company was expecting to raise the same either from the sale proceeds of the land or from the income of the trading activities duly conducted by the Company.

17. Taking over all view of the matter and

considering the fact situation of the Company and since the Secured Creditor has already been paid off and there is no liability on account of the workers' dues and the Unsecured Creditors have fully approved the Scheme, there is no reason for this Court to withhold its sanction to the Scheme. The Court, therefore, grants its sanction and approval to the Scheme of Compromise and/or Arrangement as proposed by the Company subject to the condition that the Company would not utilise the sale proceeds of the land at Bhaili which is intended to be sold for any other purpose except for the purpose of making payment to the Unsecured Creditors and an affidavit and undertaking to this effect by the Managing Director and/or Chairman of the Company be placed on record. The amount which is deposited in this Court pursuant to the order should be distributed amongst the Unsecured Creditors as per the list forwarded by the Company. Company Petition No. 156 of 2004 is hereby allowed. It is further made clear that the Company shall make the payment to the Unsecured Creditors in a phased manner as indicated above and any default committed therein will compel this Court to withdraw its sanction.

18. The petitioner is hereby directed to pay an amount of Rs. 3,500/- directly to the learned Assistant Solicitor General being the fees for the Central Government Counsel.

19. In view of the fact that the Scheme is duly approved and sanctioned by this Court, Company Petition No. 11 of 2001 does not survive and is accordingly disposed of.

20. Accordingly, both these petitions are disposed of without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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